

806 KAR 15:050. Reporting and general requirements for settlement providers and brokers.

RELATES TO: KRS 304.12-020, 304.14-120, 304.14-450, 304.14-450, 304.15-020, 304.15-035, 304.15-700-304.15-725, 304.99-020

STATUTORY AUTHORITY: KRS 304.15-715(2), 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a commissioner. KRS 304.15-715 requires a request for verification of coverage to be made on a form approved by the executive director. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720. This administrative regulation establishes the standards for life settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to life settlement contracts, life settlement providers, and life settlement brokers.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Insurance.

(2) "Department" means the Department of Insurance.

(3) "Individual identification data" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Security number, or other information that is likely to lead to the identification of the insured.

(4) "Insured" means the person covered under the policy being considered for settlement.

(5) "Insurer" is defined in KRS 304.1-040.

(6) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be settled can be expected to live as utilized by the life settlement provider pursuant to the life settlement contract considering medical records and appropriate experiential data.

(7) "Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.

(8) "Owner" is defined in KRS 304.15-020(19).

Section 2. General Rules. (1) A life settlement provider shall not unfairly discriminate in making life settlements on the basis of race, age, sex, national origin, creed, religion, occupation, or marital or family status.

(2) A life settlement provider shall not unfairly discriminate between an owner with a dependent and an owner with no dependent.

(3) A life settlement provider shall not solicit investors who may influence the treatment of the illness of the insured whose coverage would be the subject of the investment.

(4) Within three (3) days of execution of the life settlement contract, the life settlement provider shall mail to the owner copies of the following:

(a) The executed life settlement contract;

(b) The application for the life settlement contract; and

(c) The statement from the licensed attending physician that the owner is of sound mind and not under undue influence or constraint.

(5) Payment of the proceeds of a life settlement pursuant to KRS 304.15-710 (1)(g) shall be by means of wire transfer to an account designated by the owner or by certified check or cashier's check.

(6) Payment of the proceeds to the owner pursuant to a life settlement shall be made in a

lump sum, except the life settlement provider may purchase an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. The life settlement provider or escrow agent shall not retain a portion of the proceeds not disclosed or described in the life settlement contract without written consent of the owner.

(7) A life settlement provider or life settlement broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any insured's physician, or to an attorney, accountant, or other person providing medical, legal, or financial planning services to the owner, or to any other person acting as an agent of the owner, other than a life settlement broker, with respect to the life settlement.

(8) If a life settlement provider enters into a life settlement that allows the owner to retain an interest in the insurance policy, the life settlement contract shall contain the following provisions:

(a) A provision that the life settlement provider will affect the transfer of the amount of the death benefit only to the extent or portion of the amount settled. Benefits in excess of the amount settled shall be paid directly to the owner's beneficiary by the insurance company;

(b) A provision that the life settlement provider shall, upon acknowledgment of the completion of the transfer, either:

1. Advise the owner, in writing, that the insurance company has confirmed the owner's interest in the policy; or

2. Send, to the owner, a copy of the instrument sent from the insurance company to the life settlement provider that acknowledges the owner's interest in the policy; and

(c) A provision that apportions the premiums to be paid by the life settlement provider and the owner, provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.

(9) If the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements KRS 304.15-700 through KRS 304.15-720 and this administrative regulation.

Section 3. Life Settlement Contract and Form Approval. (1) A life settlement form submitted to the commissioner for approval shall:

(a) Be filed in accordance with KRS 304.14-120;

(b) Provide space for identifying the parties;

(c) Provide space for including the amount of the proceeds payable to the owner; and

(d) Provide that the contract is to be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party.

(2) Each life settlement contract or other form submitted for approval shall:

(a) Be accompanied by the filing fee prescribed by 806 KAR 4:010;

(b) Have a form number in the lower left corner;

(c) Meet the readability standards established by KRS 304.14-440; and

(d) Meet the legibility standards established by KRS 304.14-450, except the disclosures required by KRS 304.15-710 shall be in at least twelve (12) point type.

(3) The commissioner may review any previously approved life settlement contract or other form for compliance with KRS 304.15-700 to 304.15-725 and this administrative regulation.

Section 4. Filing Requirements for Advertising of Life Settlements. (1) This section shall apply to advertising of life settlement contracts, or related products or services intended for dissemination in Kentucky, including Internet advertising viewed by persons located in Kentucky.

(2) A life settlement licensee shall establish and maintain a system of control over the content, form, and method of dissemination of advertisements of its contracts, products, and services. A system of control shall include routine notification, at least once a year, to persons authorized by the life settlement licensee to disseminate advertisements, of the requirements and procedures for review by the department prior to the use of any advertisements not furnished by the life settlement licensee.

(3) A life settlement licensee shall provide a copy of any advertising for life settlements intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with KRS 304.12-020.

(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(6) The following rules shall govern the advertisement of life settlements:

(a) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving owners, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. It shall not be a remedy of misleading statements to make the life settlement contract available for inspection prior to completion of the sale, or offering to refund the payment if the owner is not satisfied, or including in the life settlement contract a "free look" period that satisfies or exceeds legal requirements.

(b) An advertisement shall not use the name or title of a life insurer or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or a service, may state that a charge is included in the payment, or may use other similar language.

(e) When a testimonial, appraisal, or analysis is used in an advertisement, the testimonial, appraisal, or analysis shall:

1. Be genuine;
2. Represent the current opinion of the author;
3. Be applicable to the life settlement contract product or service advertised;
4. Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonial, appraisal, analysis, or endorsement;
5. Prominently disclose in the advertisement if the individual making the testimonial, appraisal, analysis, or endorsement has a financial interest in the life settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit other than required union scale wages; and
6. Not state or imply that a life settlement contract benefit or service has been approved or

endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(f) In using testimonials, appraisals, or analysis, the life settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(g) If an endorsement refers to benefits received under a life settlement contract, all pertinent information shall be retained for a period of not less than five (5) years following creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

(h) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(i) An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, insurance producers, policies, services, or methods of marketing.

(j) The name of the life settlement licensee shall be identified in all advertisements about the licensee or its life settlement contracts, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

(k) An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device, or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.

(l) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners into believing that the solicitation is in some manner connected with a government program or agency.

(m) An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's Web site or contact the department to find out if Kentucky requires licensing and, if so, whether the life settlement provider or life settlement broker is licensed.

(n) An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by a government entity.

(o) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, group designation, name of an affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual

licensee or create the false impression that an affiliate or controlling entity would have responsibility for the financial obligation of the licensee.

(p) An advertisement shall not create the impression that a division or agency of the state or of the U. S. government endorses, approves or favors:

1. A life settlement licensee or its business practices or methods of operation;
2. The merits, desirability, or advisability of a life settlement contract;
3. A life settlement contract; or
4. A life insurance policy or life insurer.

(q) If the advertiser emphasizes the speed with which the settlement will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

(r) If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percent of face value obtained by owners contracting with the licensee during the past six (6) months.

Section 5. Standards for Evaluation of Reasonable Payments for Terminally or Chronically-Ill Insureds. In order to ensure that owners receive a reasonable return for settling an insurance policy, the return for settling a policy shall be no less than the following payouts for insureds that are terminally or chronically ill:

(1) If an insured's life expectancy is less than six (6) months, eighty (80) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(2) If an insured's life expectancy is at least six (6) months, but less than twelve (12) months, seventy (70) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(3) If an insured's life expectancy is at least twelve (12) months, but less than eighteen (18) months, sixty-five (65) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(4) If an insured's life expectancy is at least eighteen (18) months but less than twenty-five (25) months, sixty (60) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner; and

(5) If an insured's life expectancy is twenty-five (25) months or more, the owner shall receive at least the greater of the cash surrender value or accelerated death benefit in the policy.

Section 6. Prohibited Practices. (1) Except for a subpoena issued by the commissioner, if a life settlement provider or broker is served with a subpoena compelling the life settlement provider or broker to produce records containing individual identification data, the life settlement provider or broker shall notify the owner and the insured within five (5) business days after receiving notice of the subpoena. Notice shall be sufficient if delivered to the last known address of the owner and the insured.

(2) A life settlement broker shall not seek or obtain any compensation from the owner in connection with a life settlement transaction prior to performing any services.

Section 7. Insurance Company Practices. (1) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a life settlement provider or a life settlement broker within thirty (30) calendar days of the date a request is received, subject to the receipt of the Verification of Coverage for Life Insurance Policies Form VOC, which has been completed by the life settlement provider or the life settlement broker in accordance with the instructions on the form.

(2) A life insurance company shall not charge a fee for responding to a request for

information from a life settlement provider or life settlement broker in compliance with this section in excess of any usual and customary charges to policyholders or certificate holders for similar services.

(3) The life insurance company shall send an acknowledgement of receipt of the request for verification of coverage to the policyholder or certificate holder the acknowledgment shall contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

(4) A life insurance company shall not require the owner to sign any request for change in a policy or a group certificate from a life settlement provider that is the owner or assignee of the insured's insurance coverage, unless the owner has ownership, assignment, or irrevocable beneficiary rights under the policy. In that situation, the life settlement provider shall provide timely notice to the owner that a settlement transaction on the policy has occurred. Notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.

Section 8. Disclosure. (1) The life settlement broker shall provide a copy of the life settlement disclosure Form LS 7 and the "Kentucky Consumer Guide to Understanding Life Settlements" to the owner on or before the date that the life settlement broker offers or advertises the availability of the owner's life insurance policy, introduces the owner to a life settlement provider, or offers or attempts to negotiate a life settlement between an owner and a life settlement provider.

(2) If there is no life settlement broker involved in the life settlement transaction, the life settlement provider shall provide the life settlement disclosure Form LS 7 and the "Kentucky Consumer Guide to Understanding Life Settlements" to the owner on or before the date that the viatical settlement contract is signed by each party to the contract.

Section 9. Reporting Requirement. (1) On or before March 1 of each calendar year, the licensed life settlement provider shall submit the following:

(a) A report of the life settlement transactions related to Kentucky insureds, which shall be submitted on Form LS 1;

(b) A report of the individual mortality of Kentucky insureds, which shall be submitted on Form LS 2;

(c) A report of the life settlement transactions in all states and territories, which shall be submitted on Form LS 3; and

(d) A certification of the information contained in the reports, which shall be submitted on Form LS 6 and shall be filed with the reports.

(2) The information reported pursuant to subsection (1) of this section shall include the total number of policies for the previous calendar year that were:

(a) Reviewed for consideration by a life settlement provider;

(b) Offered for purchase to an owner of a life insurance policy; and

(c) Purchased by an owner of a life insurance policy.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Consumer Guide to Understanding Life Settlements" (7/2008 edition);

(b) Form LS 1, "Life Settlement Provider Report - Kentucky Insureds Only" (7/2008 edition);

(c) Form LS 2, "Individual Mortality Report - Kentucky Insureds Only" (7/2008 edition);

(d) Form LS 3, "Life Settlement Provider Report - All States and Territories" (7/2008 edition);

(e) Form LS 6, "Life Settlement Provider Certification Form" (7/2008 edition); and

(f) Form LS 7, "The Kentucky Life Settlement Disclosure Form - Notice Regarding Life

Settlement Contracts" (7/2008 edition); and

(g) Form VOC, "Verification of Coverage for Life Insurance Policies Form" (7/2008 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Post Office Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance Internet Web site at <http://doi.ppr.ky.gov>. (27 Ky.R. 3196; Am. 28 Ky.R. 85; eff. 7-16-2001; 32 Ky.R. 330; 911; 1621; eff. 3-31-06; 35 Ky.R. 1915; eff. 5-1-09.)